



Reprinted
January 28, 2004

SENATE BILL No. 232

DIGEST OF SB 232 (Updated January 27, 2004 3:35 pm - DI 110)

Citations Affected: IC 25-34.1.

Synopsis: Real estate brokers and salespersons. Provides that an out-of-state commercial broker or salesperson licensed in another state may practice in Indiana without an Indiana license if the out-of-state commercial broker or salesperson meets certain requirements. Provides that a licensed nonresident broker may act as a broker in Indiana if the broker meets certain requirements. Repeals the residency requirement for brokers.

Effective: July 1, 2004.

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January 8, 2004, read first time and referred to Committee on Commerce and Consumer Affairs.

January 22, 2004, reported favorably — Do Pass.

January 27, 2004, read second time, amended, ordered engrossed.

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SB 232—LS 7061/DI 110+



Reprinted
January 28, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 232

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 25-34.1-1-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. As used in this
3 article:
4 "Person" means an individual, a partnership, a corporation, or a
5 limited liability company.
6 "Commission" means the Indiana real estate commission.
7 "Real estate" means any right, title, or interest in real property.
8 "Broker" means a person who, for consideration, sells, buys, trades,
9 exchanges, options, leases, rents, manages, lists, or appraises real estate
10 or negotiates or offers to perform any of those acts.
11 "Salesperson" means an individual, other than a broker, who, for
12 consideration and in association with and under the auspices of a
13 broker, sells, buys, trades, exchanges, options, leases, rents, manages,
14 or lists real estate or negotiates or offers to perform any of those acts.
15 "Broker-salesperson" means an individual broker who is acting in
16 association with and under the auspices of another broker.
17 "Principal broker" means a broker who is not acting as a

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broker-salesperson.

"License" means a broker or salesperson license issued under this article and which is not expired, suspended, or revoked.

"Licensee" means a person who holds a license issued under this article. The term does not include a person who holds a real estate appraiser license or certificate issued under the real estate appraiser licensure and certification program established under IC 25-34.1-3-8.

"Course approval" means approval of a broker or salesperson course granted under this article which is not expired, suspended, or revoked.

"Licensing agency" means the Indiana professional licensing agency established by IC 25-1-6-3.

"Board" refers to the real estate appraiser licensure and certification board established under IC 25-34.1-8-1.

"Commercial real estate" means a parcel of real estate other than real estate containing one (1) to four (4) residential units. This term does not include single family residential units such as:

- (1) condominiums;**
- (2) townhouses;**
- (3) manufactured homes; or**
- (4) homes in a subdivision when sold, leased, or otherwise conveyed on a unit by unit basis, even if those units are part of a larger building or parcel of real estate containing more than four (4) residential units.**

"Out-of-state commercial broker" includes a person, a partnership, an association, a limited liability company, a limited liability partnership, or a corporation that is licensed to do business as a broker in a jurisdiction other than Indiana.

"Out-of-state commercial salesperson" includes a person affiliated with an out-of-state commercial broker who is not licensed as a salesperson under this article.

SECTION 2. IC 25-34.1-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) Except as provided in:

- (1) subsection (b); ~~and~~
- (2) section 8(i) of this chapter; **and**
- (3) section 11 of this chapter;**

no person shall, for consideration, sell, buy, trade, exchange, option, lease, rent, manage, list, or appraise real estate or negotiate or offer to perform any of those acts in Indiana or with respect to real estate situated in Indiana, without a license.

(b) This article does not apply to:

- (1) acts of an attorney which constitute the practice of law;

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- (2) performance by a public official of acts authorized by law;
- (3) acts of a receiver, executor, administrator, commissioner, trustee, or guardian, respecting real estate owned or leased by the person represented, performed pursuant to court order or a will;
- (4) rental, for periods of less than thirty (30) days, of rooms, lodging, or other accommodations, by any commercial hotel, motel, tourist facility, or similar establishment which regularly furnishes such accommodations for consideration;
- (5) rental of residential apartment units by an individual employed or supervised by a licensed broker;
- (6) rental of apartment units which are owned and managed by a person whose only activities regulated by this article are in relation to a maximum of twelve (12) apartment units which are located on a single parcel of real estate or on contiguous parcels of real estate;
- (7) referral of real estate business by a broker, salesperson, or referral company which is licensed under the laws of another state, to or from brokers and salespersons licensed by this state;
- (8) acts performed by a person in relation to real estate owned by that person unless that person is licensed under this article, in which case the article does apply to him;
- (9) acts performed by a regular, full-time, salaried employee of a person in relation to real estate owned or leased by that person unless the employee is licensed under this article, in which case the article does apply to him;
- (10) conduct of a sale at public auction by a licensed auctioneer pursuant to IC 25-6.1;
- (11) sale, lease, or other transfer of interests in cemetery lots; and
- (12) acts of a broker or salesperson, who is licensed under the laws of another state, which are performed pursuant to, and under restrictions provided by, written permission that is granted by the commission in its sole discretion, except that such a person shall comply with the requirements of section 5(c) of this chapter.

SECTION 3. IC 25-34.1-3-4.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4.1. (a) To obtain a broker license, an individual must:

- (1) be at least eighteen (18) years of age before applying for a license and must not have a conviction for:
 - (A) an act that would constitute a ground for disciplinary sanction under IC 25-1-11;
 - (B) a crime that has a direct bearing on the individual's ability to practice competently; or

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- 1 (C) a crime that indicates the individual has the propensity to
 2 endanger the public.
- 3 (2) have satisfied section 3.1(a)(2) of this chapter and have had
 4 continuous active experience for one (1) year immediately
 5 preceding the application as a licensed salesperson in Indiana;
 6 however, this one (1) year experience requirement may be waived
 7 by the commission upon a finding of equivalent experience;
- 8 (3) have successfully completed an approved broker course of
 9 study as prescribed in IC 25-34.1-5-5(b);
- 10 (4) apply for a license by submitting the application fee
 11 prescribed by the commission and an application specifying the
 12 name, address, and age of the applicant, the name under which
 13 the applicant intends to conduct business, the address where the
 14 business is to be conducted, proof of compliance with
 15 subdivisions (2) and (3), and any other information the
 16 commission requires;
- 17 (5) pass a written examination prepared and administered by the
 18 commission or its duly appointed agent; and
- 19 (6) within one hundred twenty (120) days after passing the
 20 commission examination, submit the license fee of fifty dollars
 21 (\$50). If an individual applicant fails to file a timely license fee,
 22 the commission shall void the application and may not issue a
 23 license to that applicant unless that applicant again complies with
 24 the requirements of subdivisions (4) and (5) and this subdivision.
- 25 (b) To obtain a broker license, a partnership must:
- 26 (1) have as partners only individuals who are licensed brokers;
- 27 ~~(2) have at least one (1) partner who is a resident of Indiana;~~
- 28 ~~(3) (2)~~ cause each employee of the partnership who acts as a
 29 broker or salesperson to be licensed; and
- 30 ~~(4) (3)~~ submit the license fee of fifty dollars (\$50) and an
 31 application setting forth the name and residence address of each
 32 partner and the information prescribed in subsection (a)(4).
- 33 (c) To obtain a broker license, a corporation must:
- 34 (1) have a licensed broker ~~residing in Indiana~~ who is either an
 35 officer of the corporation or, ~~if no officer resides in Indiana,~~ the
 36 highest ranking corporate employee in Indiana with authority to
 37 bind the corporation in real estate transactions;
- 38 (2) cause each employee of the corporation who acts as a broker
 39 or salesperson to be licensed; and
- 40 (3) submit the license fee of fifty dollars (\$50), an application
 41 setting forth the name and residence address of each officer and
 42 the information prescribed in subsection (a)(4), a copy of the

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certificate of incorporation, and a certificate of good standing of the corporation issued by the secretary of state of Indiana.

(d) To obtain a broker license, a limited liability company must:

(1) if a:

(A) member-managed limited liability company,

~~(A)~~ have as members only individuals who are licensed brokers; and

~~(B) have at least one (1) member who is a resident of Indiana;~~ or

~~(2) (B) if a~~ manager-managed limited liability company, have a licensed broker ~~residing in Indiana~~ who is either a manager of the company or, ~~if no manager resides in Indiana,~~ the highest ranking company officer or employee ~~in Indiana~~ with authority to bind the company in real estate transactions;

~~(3) (2)~~ cause each employee of the limited liability company who acts as a broker or salesperson to be licensed; and

~~(4) (3)~~ submit the license fee of fifty dollars (\$50) and an application setting forth the information prescribed in subsection (a)(4), together with:

(A) if a member-managed company, the name and residence address of each member; or

(B) if a manager-managed company, the name and residence address of each manager, or of each officer if the company has officers.

(e) Licenses granted to partnerships, corporations, and limited liability companies are issued, expire, are renewed, and are effective on the same terms as licenses granted to individual brokers, except as provided in subsection (h), and except that expiration or revocation of the license of:

(1) any partner in a partnership or all individuals in a corporation satisfying subsection (c)(1); or

(2) a member in a member-managed limited liability company or all individuals in a manager-managed limited liability company satisfying subsection ~~(d)(2); (d)(1)(B);~~

terminates the license of that partnership, corporation, or limited liability company.

(f) Upon the applicant's compliance with the requirements of subsection (a), (b), or (c), the commission shall issue the applicant a broker license and an identification card which certifies the issuance of the license and indicates the expiration date of the license. The license shall be displayed at the broker's place of business.

(g) Notice of passing the commission examination serves as a

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temporary permit for an individual applicant to act as a broker as soon as the applicant sends, by registered or certified mail with return receipt requested, a timely license fee as prescribed in subsection (a)(6). The temporary permit expires the earlier of one hundred twenty (120) days after the date of the notice of passing the examination or the date a license is issued.

(h) A broker license expires, for individuals, at midnight, December 31 and, for corporations, partnerships, and limited liability companies at midnight, June 30 of the next even-numbered year following the year in which the license is issued or last renewed, unless the licensee renews the license prior to expiration by payment of a biennial license fee of fifty dollars (\$50). An expired license may be reinstated within one hundred twenty (120) days after expiration by payment of all unpaid license fees together with twenty dollars (\$20). If the license is renewed within eighteen (18) months, but more than one hundred twenty (120) days, after expiration, the licensee must pay a late fee of one hundred dollars (\$100) plus any unpaid license fees. If a broker fails to reinstate a license within eighteen (18) months after expiration, a license may not be issued unless the broker again complies with the requirements of subsection (a)(4), (a)(5), and (a)(6).

(i) A partnership, corporation, or limited liability company may not be a broker-salesperson except as authorized in IC 23-1.5. An individual broker who associates as a broker-salesperson with a principal broker shall immediately notify the commission of the name and business address of the principal broker and of any changes of principal broker that may occur. The commission shall then change the address of the broker-salesperson on its records to that of the principal broker.

SECTION 4. IC 25-34.1-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) A resident of another state, meeting the requirements of this chapter, may be licensed.

~~(b) A nonresident individual broker may act only as a broker-salesperson.~~

~~(c)~~ (b) A nonresident salesperson or broker shall file with the commission a written consent that any action arising out of the conduct of the licensee's business in Indiana may be commenced in any county of this state in which the cause of action accrues. The consent shall provide that service of process may be made upon the commission, as agent for the nonresident licensee, and that service in accordance with the Indiana Rules of Trial Procedure subjects the licensee to the jurisdiction of the courts in that county.

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(c) The requirements of this section may be waived for individuals of or moving from other jurisdictions if the following requirements are met:

(1) The jurisdiction grants the same privilege to the licensees of this state.

(2) The individual:

(A) is licensed; and

(B) has been practicing;

in that jurisdiction for at least two (2) years immediately before the date the application for licensure was filed under this chapter.

(3) The licensing requirements of that jurisdiction are substantially similar to the requirements of this chapter.

(4) The applicant states that the applicant has studied, is familiar with, and will abide by the statutes and rules of this state.

SECTION 5. IC 25-34.1-3-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) An out-of-state commercial broker, for a fee, commission, or other valuable consideration, or in expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, may perform acts with respect to commercial real estate that require a license under this article without a license under this article, if the out-of-state commercial broker does all of the following:

(1) Works in cooperation with a broker who holds a valid license issued under this article.

(2) Enters into a written agreement with the broker described in subdivision (1) that includes the terms of cooperation and compensation and a statement that the out-of-state commercial broker and the broker's agents will comply with the laws of this state.

(3) Furnishes the broker described in subdivision (1) with a copy of the out-of-state commercial broker's current certificate of good standing or other proof of a license in good standing from a jurisdiction where the out-of-state commercial broker maintains a valid real estate license.

(4) Files an irrevocable written consent with the commission that legal actions arising out of the conduct of the out-of-state commercial broker or the broker's agents may be commenced against the out-of-state commercial broker in a court with jurisdiction in a county in Indiana in which the cause of action

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(5) Advertises in compliance with state law and includes the name of the broker described in subdivision (1) in all advertising.

(6) Deposits all escrow funds, security deposits, and other money received by either the out-of-state commercial broker or the broker described in subdivision (1) in a trust account maintained by the broker described in subdivision (1).

(7) Deposits all documentation required by this section and records and documents related to the transaction with the broker described in subdivision (1).

(b) The broker described in subsection (a)(1) shall retain the documentation that is provided by the out-of-state commercial broker as required under this section, and the records and documents related to a transaction, for a period of at least five (5) years.

(c) An out-of-state commercial salesperson may perform acts with respect to commercial real estate that require a salesperson to be licensed under this article without a license under this article, if the out-of-state commercial salesperson meets all of the following requirements:

(1) The out-of-state commercial salesperson:

(A) is licensed with and works under the direct supervision of the out-of-state commercial broker;

(B) provides the broker described in subsection (a)(1) with a copy of the out-of-state commercial salesperson's current certificate of good standing or other proof of a license in good standing from the jurisdiction where the out-of-state commercial salesperson maintains a valid real estate license in connection with the out-of-state commercial broker; and

(C) collects money, including:

(i) commissions;

(ii) deposits;

(iii) payments;

(iv) rentals; or

(v) escrow funds;

only in the name of and with the consent of the out-of-state commercial broker under whom the out-of-state commercial salesperson is licensed.

(2) The out-of-state commercial broker described in subdivision (1)(A) meets all of the requirements of subsection

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1 **(a).**

2 **(d) A person licensed in a jurisdiction where there is not a legal**
3 **distinction between a real estate broker license and a real estate**
4 **salesperson license must meet the requirements of subsection (a)**
5 **before engaging in an act that requires a license under this article.**

6 **(e) An out-of-state commercial broker or salesperson acting**
7 **under this section shall file a written consent as provided in**
8 **IC 25-34.1-3-5(c).**

9 **SECTION 6. IC 25-34.1-4-3 IS REPEALED [EFFECTIVE JULY**
10 **1, 2004].**

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COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 232, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 232 as introduced.)

SERVER, Chairperson

Committee Vote: Yeas 6, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 232 be amended to read as follows:

Page 2, delete lines 14 through 21.

Page 3, between lines 41 and 42, begin a new paragraph and insert:

"SECTION 3. IC 25-34.1-3-4.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4.1. (a) To obtain a broker license, an individual must:

(1) be at least eighteen (18) years of age before applying for a license and must not have a conviction for:

(A) an act that would constitute a ground for disciplinary sanction under IC 25-1-11;

(B) a crime that has a direct bearing on the individual's ability to practice competently; or

(C) a crime that indicates the individual has the propensity to endanger the public.

(2) have satisfied section 3.1(a)(2) of this chapter and have had continuous active experience for one (1) year immediately preceding the application as a licensed salesperson in Indiana; however, this one (1) year experience requirement may be waived by the commission upon a finding of equivalent experience;

(3) have successfully completed an approved broker course of study as prescribed in IC 25-34.1-5-5(b);

(4) apply for a license by submitting the application fee prescribed by the commission and an application specifying the name, address, and age of the applicant, the name under which the applicant intends to conduct business, the address where the business is to be conducted, proof of compliance with subdivisions (2) and (3), and any other information the commission requires;

(5) pass a written examination prepared and administered by the commission or its duly appointed agent; and

(6) within one hundred twenty (120) days after passing the commission examination, submit the license fee of fifty dollars (\$50). If an individual applicant fails to file a timely license fee, the commission shall void the application and may not issue a license to that applicant unless that applicant again complies with the requirements of subdivisions (4) and (5) and this subdivision.

(b) To obtain a broker license, a partnership must:

(1) have as partners only individuals who are licensed brokers;

~~(2) have at least one (1) partner who is a resident of Indiana;~~

~~(3)~~ (2) cause each employee of the partnership who acts as a

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broker or salesperson to be licensed; and

~~(4)~~ (3) submit the license fee of fifty dollars (\$50) and an application setting forth the name and residence address of each partner and the information prescribed in subsection (a)(4).

(c) To obtain a broker license, a corporation must:

(1) have a licensed broker ~~residing in Indiana~~ who is either an officer of the corporation or, ~~if no officer resides in Indiana~~, the highest ranking corporate employee in Indiana with authority to bind the corporation in real estate transactions;

(2) cause each employee of the corporation who acts as a broker or salesperson to be licensed; and

(3) submit the license fee of fifty dollars (\$50), an application setting forth the name and residence address of each officer and the information prescribed in subsection (a)(4), a copy of the certificate of incorporation, and a certificate of good standing of the corporation issued by the secretary of state of Indiana.

(d) To obtain a broker license, a limited liability company must:

(1) if a:

(A) member-managed limited liability company,

~~(A)~~ have as members only individuals who are licensed brokers; ~~and~~

~~(B)~~ have at least one ~~(1)~~ member who is a resident of Indiana; or

~~(2)~~ (B) if a manager-managed limited liability company, have a licensed broker ~~residing in Indiana~~ who is either a manager of the company or, ~~if no manager resides in Indiana~~, the highest ranking company officer or employee ~~in Indiana~~ with authority to bind the company in real estate transactions;

~~(3)~~ (2) cause each employee of the limited liability company who acts as a broker or salesperson to be licensed; and

~~(4)~~ (3) submit the license fee of fifty dollars (\$50) and an application setting forth the information prescribed in subsection (a)(4), together with:

(A) if a member-managed company, the name and residence address of each member; or

(B) if a manager-managed company, the name and residence address of each manager, or of each officer if the company has officers.

(e) Licenses granted to partnerships, corporations, and limited liability companies are issued, expire, are renewed, and are effective on the same terms as licenses granted to individual brokers, except as provided in subsection (h), and except that expiration or revocation of

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the license of:

- (1) any partner in a partnership or all individuals in a corporation satisfying subsection (c)(1); or
- (2) a member in a member-managed limited liability company or all individuals in a manager-managed limited liability company satisfying subsection ~~(d)(2)~~; **(d)(1)(B)**;

terminates the license of that partnership, corporation, or limited liability company.

(f) Upon the applicant's compliance with the requirements of subsection (a), (b), or (c), the commission shall issue the applicant a broker license and an identification card which certifies the issuance of the license and indicates the expiration date of the license. The license shall be displayed at the broker's place of business.

(g) Notice of passing the commission examination serves as a temporary permit for an individual applicant to act as a broker as soon as the applicant sends, by registered or certified mail with return receipt requested, a timely license fee as prescribed in subsection (a)(6). The temporary permit expires the earlier of one hundred twenty (120) days after the date of the notice of passing the examination or the date a license is issued.

(h) A broker license expires, for individuals, at midnight, December 31 and, for corporations, partnerships, and limited liability companies at midnight, June 30 of the next even-numbered year following the year in which the license is issued or last renewed, unless the licensee renews the license prior to expiration by payment of a biennial license fee of fifty dollars (\$50). An expired license may be reinstated within one hundred twenty (120) days after expiration by payment of all unpaid license fees together with twenty dollars (\$20). If the license is renewed within eighteen (18) months, but more than one hundred twenty (120) days, after expiration, the licensee must pay a late fee of one hundred dollars (\$100) plus any unpaid license fees. If a broker fails to reinstate a license within eighteen (18) months after expiration, a license may not be issued unless the broker again complies with the requirements of subsection (a)(4), (a)(5), and (a)(6).

(i) A partnership, corporation, or limited liability company may not be a broker-salesperson except as authorized in IC 23-1.5. An individual broker who associates as a broker-salesperson with a principal broker shall immediately notify the commission of the name and business address of the principal broker and of any changes of principal broker that may occur. The commission shall then change the address of the broker-salesperson on its records to that of the principal broker.

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SECTION 4. IC 25-34.1-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) A resident of another state, meeting the requirements of this chapter, may be licensed.

~~(b) A nonresident individual broker may act only as a broker-salesperson.~~

~~(c)~~ (b) A nonresident salesperson or broker shall file with the commission a written consent that any action arising out of the conduct of the licensee's business in Indiana may be commenced in any county of this state in which the cause of action accrues. The consent shall provide that service of process may be made upon the commission, as agent for the nonresident licensee, and that service in accordance with the Indiana Rules of Trial Procedure subjects the licensee to the jurisdiction of the courts in that county.

~~(d)~~ (c) The requirements of this section may be waived for individuals of or moving from other jurisdictions if the following requirements are met:

(1) The jurisdiction grants the same privilege to the licensees of this state.

(2) The individual:

(A) is licensed; and

(B) has been practicing;

in that jurisdiction for at least two (2) years immediately before the date the application for licensure was filed under this chapter.

(3) The licensing requirements of that jurisdiction are substantially similar to the requirements of this chapter.

(4) The applicant states that the applicant has studied, is familiar with, and will abide by the statutes and rules of this state."

Page 4, line 19, after "standing" insert **"or other proof of a license in good standing"**.

Page 4, line 22, delete "broker" and insert **"commission"**.

Page 4, line 23, delete "described in subdivision (1)".

Page 4, line 33, after "trust" insert **"account"**.

Page 4, line 41, after "of" insert **"at least"**.

Page 4, line 41, after "years" insert ".".

Page 4, delete line 42.

Page 5, delete line 1.

Page 5, line 3, after "a" delete "real estate".

Page 5, line 4, after "salesperson" insert **"to be"**.

Page 5, line 12, after "standing" insert **"or other proof of a license in good standing"**.

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Page 5, line 19, delete "or".

Page 5, line 20, after "rentals;" insert "**or**".

Page 5, between lines 20 and 21, begin a new line triple block indented and insert:

"(v) escrow funds;".

Page 5, line 33, delete "IC 25-24.1-3-5(c)." and insert "**IC 25-34.1-3-5(c).**".

Page 5, between lines 33 and 34, begin a new paragraph and insert:
"SECTION 6. IC 25-34.1-4-3 IS REPEALED [EFFECTIVE JULY 1, 2004]."

Page 5, delete lines 34 through 42.

Delete pages 6 through 7.

Re-number all SECTIONS consecutively.

(Reference is to SB 232 as printed January 23, 2004.)

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